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In the
Supreme Court of the United States

OCTOBER TERM, 1962

No. 625

TEXACO PUERTO RICO, INC.,
PETITIONER,

v.

SOL LUIS DESCARTES, Treasurer of Puerto Rico,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that writ of certiorari issue to review the Judgment of the United States Court of Appeals for the First Circuit entered on June 7, 1962, Petition for Rehearing having been denied by Order of Court of July 25, 1962.

This case arose from a claim filed by petitioner with the Treasurer of Puerto Rico and upon denial thereof by the Treasurer, with the Tax Court of Puerto Rico whereby the reimbursement of excise paid in the amount of $5,494.08 was requested. Said excises were collected by the

Treasurer of Puerto Rico and paid by petitioner on the amount of 181,140 gallons of kerosene brought in a vessel from Aruba and lost in the sea while being pumped into the petitioner's tanks in Puerto Rico. Consequently, the kerosene never became a part of the mass of property of Puerto Rico and its loss in the sea was stipulated by both parties in the stipulation filed with the Court on January 18, 1949. (Pages 1 to 11 of the Record Appendix).

In the complaint the following questions were raised: that the kerosene had never been sold, transferred, used, consumed or introduced into this Island; that the so-called introduction or rather pumping into the sea did not constitute a taxable event authorized by law; that the People of Puerto Rico lacked power in law to levy taxes on the mere introduction or importation of goods into this Island; and that the excise tax involved in this case was tantamount to the levying of a customs duty on imports which neither the People of Puerto Rico nor the Treasurer of Puerto Rico were authorized to levy.

Opinion Below

The Opinion of the United States Court of Appeals for the First Circuit of June 7, 1962 is attached and forms part of this Petition. It bears the number 5856. The Judgment of June 7, 1962 and the Order of Court of July 25, 1962, both rendered by the United States Court of Appeals for the First Circuit, are also attached to this Petition.

Jurisdiction

The judgment of the United States Court of Appeals for the First Circuit was entered on June 7, 1962 and upon

denial of the Petition for Rehearing was maintained on July 25, 1962.

Upon consideration of petitioner's application for extension of time within which to file a Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit, this Court entered an Order signed by Mr. Chief Justice Earl Warren whereby the time for filing said petition was extended to and including November 22, 1962.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254, which reads as follows:

> § 1254.—Courts of appeals; certiorari; appeal; certified questions
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) . . . . .
>
> (3) . . . . .

Questions Presented

1. The United States Congress did not grant to Puerto Rico the power to levy duties on imports and thus our Legislature cannot levy a tax that operates as an import duty on articles introduced into Puerto Rico, without violating the Due Process Clause.

2. The United States Congress did not grant to the Legislature of Puerto Rico the above power to levy a tax on imports when it approved the Butler Act inasmuch as said statute merely authorized our Legislature to levy *internal revenue taxes* on merchandise as soon as the merchandise is manufactured, sold, used in, or imported into

the Island. That statute at no time provided that Puerto Rico could levy a customs duty on the imports as such.

3. Even under the assumption that by virtue of the Butler Act the Legislature of Puerto Rico had been authorized to levy a tax as soon as a specific merchandise is *introduced* into the Island, the process of the introduction of the merchandise must necessarily be completed. In the present case during the delivery process and without the product having been landed, 181,140 gallons of kerosene were lost for which reason the taxable event was not consummated. For this additional reason, the tax provided by the statute cannot be levied thereon.

Statutes Involved

The statutes pertinent to this petition are Section 3 of the Organic Act of Puerto Rico approved March 2, 1917 by the Congress of the United States; the Butler Act approved by the Congress of the United States on March 4, 1927, 44 Stat. 1418; Section 2 of the Foraker Act approved by the Congress of the United States on April 12, 1900, 31 Stat. 77; Tariff Act of Congress of 1930; Second paragraph of Article 4, Section 3 of the Constitution of the United States; Organic Act of Puerto Rico, approved March 2, 1917, 39 Stat. 951, 48 U.S.C.A. 737; Section 16(a) of the Internal Revenue Act of Puerto Rico (as amended by Act No. 17 of June 3, 1927); Section 62 of the Internal Revenue Act of Puerto Rico (as amended by Act No. 17 of June 3, 1927); Revenue Act of 1932 of the Congress of the United States; Sections 16 and 29 of the Internal Revenue Act of Puerto Rico; Due Process Clause of the Constitution of the United States and of the Constitution of Puerto Rico.

Statement

On April 19, 1948 the Treasurer of Puerto Rico found that the request for refund of the excises levied on the kerosene which had been lost in the sea was improper and that it should be refused. In his communication he stated that the administrative hearing requested by petitioner would be of no practical end or use since the Department was of the opinion that petitioner's claim did not lie. Upon the denial of the petition for refund the amended complaint was filed and a judgment was requested from the Tax Court of Puerto Rico ordering the refund of the amount of $5,494.08, plus interest. A stipulation was filed by petitioner and by the Attorney General of Puerto Rico whereby the facts related to the loss of the kerosene were accepted and stipulated. Paragraph 7 of said stipulation filed on January 18, 1949, reads as follows: "That the total loss suffered by The Texas Co. (P. R.) Inc. and for which it paid the excises the refund of which it requests, amounts of 181,140 gallons at 60°, equivalent to 183,136 gallons at natural temperature." (Page 11 of the Record Appendix submitted to the U. S. Court of Appeals for the First Circuit). A second stipulation was filed on May 10, 1950 (Page 12, Record Appendix, filed with the U. S. Court of Appeals for the First Circuit).

The Tax Court of Puerto Rico by its Opinion of December 7, 1950, delivered by Judge Santana Becerra, dismissed the claim for refund of taxes. (Page 13 of said Record Appendix). A Petition for Certiorari was filed with the Supreme Court of Puerto Rico on January 6, 1951 (Page 31 of said Record Appendix) and on March 2, 61 the Opinion of the Supreme Court of Puerto Rico was delivered by Mr. Justice Hernandez Matos whereby the Judgment appealed from was affirmed (Pages 39-69 of the

Record Appendix filed with the U. S. Court of Appeals for the First Circuit).

The Judgment of the Supreme Court of Puerto Rico was appealed to the United States Court of Appeals for the First Circuit (Page 70 of the Record Appendix filed with said Court) and on June 7, 1962 Judgment was rendered by the latter Court affirming the judgment of the Supreme Court of Puerto Rico. Petition for Rehearing was filed by petitioner with the United States Court of Appeals for the First Circuit, said petition having been denied on July 25, 1962. (See exhibits attached to this petition).

The questions to which reference has been made in this petition relative to the lack of authority of the Legislature of Puerto Rico to levy a tax which amounted to a customs import duty, was duly and timely raised before the Tax Court, the Supreme Court of Puerto Rico and the United States Court of Appeals for the First Circuit. The United States Court of Appeals found that the Butler Amendment authorized the Puertorican Legislature to impose taxes which in their practical effect amounted to a customs duty or duty on imports. This finding was based in the decision entered by this Court in the case of *West India Oil Company* v. *Domenech*, 311 U.S. 20, 27, 28 (1940) and in its own decision entered in the case of *Buscaglia* v. *Ballester*, 162 F (2d.) 805, 807. In both these cases, the Court found that the original tax, in the *West India* case a sales tax, and in the *Ballester* case a property or ad valorem tax, was correctly and validly levied for which reason it did not matter that such tax (validly levied) would operate as a customs duty. The Petition for Rehearing bringing these questions to the attention of the United States Court of Appeals for the First Circuit was denied.

In the Application for Extension of Tim which upon permission by this Court will be printed in the Supplement to Petition For Writ of Certiorari together with the

statutes involved, petitioner set out the stage in the proceedings in the Court of First Instance and in the Appellate Court, at which, and the manner in which the questions sought to be reviewed were raised, as well as the methods of raising them and the way in which they were passed upon by the Court.

Argument

Questions I and II

By Section 3 of the Organic Act of Puerto Rico approved on March 2, 1917 by the Congress of the United States, which was the only statute dealing with the question of taxation on these matters, the only taxes which were authorized by Congressional action were taxes and assessments on property, internal revenue, license fees, royalties for franchises, privileges and concessions. This section was amended in 1927 by the Congress of the United States through an enactment known as the Butler Act. To overcome the difficulties of the application of the "original package" doctrine, the Congress of the United States, with the purpose of helping the Government of Puerto Rico to collect the internal revenue taxes which it had been previously authorized to impose, approved the above mentioned Act to the effect that such internal revenue taxes could be collected as soon as the product, or ware, or merchandise, was brought into the island. The tax continued to be an internal revenue tax and no authority was granted to the Legislature of Puerto Rico to levy an import duty. Petitioner calls the attention of the Court to the direct legislative act of Congress in the year 1934, after the Butler amendment, to permit Puerto Rico to levy a custom duty on coffee, thus amending the rule established by Section 2 of the Foraker Act. (See *Puerto Rico*

Brokerage Co., Inc. v. *U. S.*, 71 F. (2) 469; 76 F. (2) 665). The duties collected between the effective date of the local law and the date on which the Tariff Act of Congress became effective, were involved in the litigation in *Puerto Rico Brokerage Co., Inc., supra* and the Court of Customs and Patent Appeals held that it was evident that the Legislature of Puerto Rico did not have the power at the time (1930) it adopted the Joint Resolution to provide an import duty on coffee. Subsequently, the Congress expressly validated the local law thus settling the question as to coffee.

It was due to the doubts and difficulties which arose with respect to the imposition of local taxes on goods while still in the original package and also while in the control of the postal or custom authorities that Congress passed the so-called Butler amendment on March 4, 1927. This Court in the case of *West India Oil Company* v. *Domenech*, 311 U.S. 20 held that the Legislature of Puerto Rico was authorized to impose taxes which in their practical effect amounted to a customs duty or duty or impost on imports. In view of the above decision and in view of its own ruling in the case of *Buscaglia* v. *Ballester*, 162 F. (2) 805, The Boston Court held that in neither case was it suggested that Congress in the exercise of its broad powers under the second paragraph of Article IV, Section 3 of the Constitution of the United States to legislate respecting territories could not authorize the local legislature to impose such taxes. But this is not the point. Under the above constitutional provisions, the Congress of the United States can authorize the Legislature of Puerto Rico to levy an import duty. The contention is that Congress did not do that by the approval of the Butler amendment to the Organic Act. It just stated the first moment at which the internal revenue taxes authorized by the Organic Act could be collected. A statute including "intro-

duction" as a taxable event in itself went further than was contemplated by the 1927 enactment.

The Court of Appeals cited the *Buscaglia* v. *Ballester* case to the following effect: "Even though the particular application of the insular general property tax to the appellee's merchandise, may make the tax in its effect a duty or impost on imports, nevertheless it is a tax which Congress in the exercise of its plenary power in the premises had authorized the insular legislature to impose." The above was concluded in view of the language used by this Court in the *West India Oil Co.* case *supra*.

The question is not, however, that the local excise tax cannot be imposed on the spilled kerosene because as so applied it amounts to a customs duty or duty or impost on an import. The question is that contrary to the facts of the *Ballester* and of the *West India Oil* case where there was a valid imposition in pursuance of the provisions of the Organic Act, in one case, an ad valorem tax and in the second case, a sales tax, in this particular case the tax sought to be imposed is on the introduction of the product, the latter being in itself an independent taxable event not permitted by the Organic Act as originally approved nor as amended in 1927. It is precisely the modality contained in the statute relative to the imposition of a tax on the introduction of the product that which is illegal. The phrase contained in the Butler statute "as soon as brought into" the Island did not create by itself a new category of taxes in addition to the existing internal revenue taxes which could validly be collected upon the sale, transfer, use or consumption of the product into Puerto Rico. We have seen how in the coffee cases congressional action was necessary for Puerto Rico to levy a duty payable on the mere introduction of the coffee.

In the *West India Oil Co.* case *supra*, the question was whether a Puerto Rico sales tax imposed by Sections

16(a), 62 of the Internal Revenue Act of Puerto Rico (as amended by Act No. 17 of June 3, 1927) was invalid because as applied it infringed Congressional regulations of foreign and domestic commerce. The tax was challenged so far as it was laid on the delivery, in consummation of sales of fuel oil which had previously been imported in bond and then withdrawn, duty free, for delivery to vessels in Puerto Rican ports for use as fuel upon their voyages to ports of the United States or foreign countries. The Court granted certiorari because the question presented was important in the administration of the custom laws of the United States and of the revenue laws of Puerto Rico. The withdrawals of the oil and its delivery to vessels in Puerto Rican ports were made upon sales.

It had been previously held in the case of *McGoldrick* v. *Gulf Oil Corporation*, 309 U.S. 414, that the Provisions of the Tariff Act of 1930 and of the Revenue Act of 1932 as applied under the circumstances of the case, manifested an intention of Congress to regulate the foreign commerce involved in the interest of and for the protection of American manufacturers and that a state tax on the sale was invalid because in conflict with such regulations.

This Court ruled in view of Section 3 of the Organic Act as amended, that the Internal Revenue taxes provided by said statute could be levied on the articles subject to said tax, as soon as the same were manufactured, sold, used, or brought into the Island. It further held that the plain purport of the words of the proviso was that any tax authorized by the Organic Act with regard to articles of domestic production could likewise be levied with respect to imported articles. The limitation "to a tax authorized by the Organic Act" is always present; consequently, a tax such as the one imposed in the present case, based solely on the "introduction", with no further possible relation to an internal revenue imposition should

not be maintained. It is Petitioner's contention that the Legislature of Puerto Rico was not authorized to impose such taxes and that the rulings in the *West India Oil* case and in the *Buscaglia* v. *Ballester Co.* case would have been different if the present factual situation had been submitted to the Courts.

In the case of *Buscaglia* v. *Liggett & Myers Tobacco Co.*, 149 F (2) 493, the United States Court of Appeals found that in view of the fact that the cigarettes never came within the taxing jurisdiction of Puerto Rico, the decent thing for the Insular Government to do would be to issue to the shipper or importer internal revenue stamps of a face value equivalent to the cancelled stamps. Petitioner's question now is if the decision of the Court would have been different if the ship had been sunk within the jurisdictional waters of Puerto Rico.

A general tax authorization, which refers only to the moment at which a tax previously authorized by Congress through the Organic Act of 1917 can be collected cannot be construed as authority of Congress to permit a tax by the local legislature utilizing as taxable event the mere arrival within Puerto Rican waters of a product which ceased to be prior to its becoming a part of the mass of property of Puerto Rico. "Brought into Puerto Rico" should be held to mean when goods form part of the common mass of taxable property.

In view of the above stated, Petitioner-Appellant submits to the consideration of this Court that the maintenance of the tax herein involved constitutes a violation of the provisions contained in both Constitutions relative to the deprivation of property rights without due process of law.

Question III

The Supreme Court of Puerto Rico found that the "kerosene although spilled into the harbor", had been introduced into Puerto Rico. The parties stipulated the loss of the gasoline. Petitioner contends that the statute merely makes (validly or not), the introduction a taxable event but that it cannot in any way determine a factual situation.

The kerosene in question never came to form part of Puerto Rico and it could not have been within the taxing jurisdiction of the Island. For a tax statute to operate, a thing must exist. The decisions in the *West India* case *supra* and in the *Ballester* case *supra* would have been different if the present factual situation would have been present. The question of the negligence in the handling of the product is beside the point. The documentary evidence and the stipulated facts were disregarded. The constitutional guarantees were aimed precisely to protect citizens against seizures, trespasses and deprivations of their rights. The ruling with which we are now concerned is violative of the Due Process Clause of both Constitutions.

Conclusion

The question now before this Court is a recurring question; in the Petition for Certiorari filed with this Court in the case of *Tecon Corporation, Petitioner* v. *Secretary of the Treasury of the Commonwealth of Puerto Rico*, No. 900 (certiorari denied), a similar levy was done in connection with machinery which was exclusively utilized in a federal base in Puerto Rico. Petitioner respectfully submits that the opinion of this Court in the *West India Oil* case *supra* has not been correctly construed by the United States Court of Appeals for the First Circuit and that

Congress never granted to the Legislature of Puerto Rico the power to levy a tax not included in the category of internal revenue taxes. To our minds, the decision of the Court of Appeals is in conflict with the ruling of this Court in the *West India* case. This Court has gone as far as vacating its orders denying petitions for rehearing when justice is so required. The smallness of the amount involved in any one case is not important where due process questions raised by a litigant are substantial. We have seen that after the approval of the Butler Act the Congress of the United States had to expressly authorize the levying by Puerto Rico of a customs duty in the cases known as the coffee cases, *Puerto Rico Brokerage Co. Inc.* v. *U. S.*, 71 F.(2) 469; 76 F (2) 665.

For All the Foregoing Reasons, Petitioner requests from this Honorable Court that this Petition for Writ of Certiorari be granted.

Respectfully Submitted in San Juan, Puerto Rico, this 17th day of November, 1962.

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RESPONDENT.

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Texaco Puerto Rico Inc., a domestic corporation, formerly known as The Texas Co. (P.R.) Inc., through its undersigned attorneys respectfully alleges and prays:—

On June the 7th., 1962 an Opinion, not as yet reported, was rendered by the United States Court of Appeals, for the First Circuit bearing the number 5856.

In due time a motion or Petition for Rehearing was filed and on July 25th., 1962, said Petition was denied. Consequently, the judgment of the Supreme Court of Puerto Rico as affirmed by the Opinion and Judgment of the United States Court of Appeals for the First Circuit was final on this last day. The mandate was issued and petitioner appellant's motion for reconsideration of the order of the Court of Appeals, of August 7, 1962, and for an order

recalling mandate was denied. This case dealt with the reimbursement of excise taxes already paid to the Secretary of the Treasury of Puerto Rico.

The undersigned attorney is unable at this moment to include as an appendix to this Application a copy of the Opinion delivered by United States Court of Appeals for the First Circuit upon the rendering of the judgment sought to be reviewed, due to the fact that she had to leave unexpectedly for this city of Madrid, Spain to attend important matters with relation to her only daughter staying there. The necessary instructions have been mailed to the Blanchard Printing Company of Boston, Massachusetts, for the urgent delivery to the Clerk of this Court of a printed copy of the above mentioned opinion of June the 7th., 1962. The following documents which the undersigned attorney did bring with her are enclosed to be appended to this application: (a) Opinion of the Supreme Court of Puerto Rico, delivered by Mr. Justice Hernández Matos, on March 2, 1961, at San Juan, Puerto Rico. Page 39 of the Record Appendix filed with Brief for Appellant, Case No. 5856.; (b) Petition for Rehearing filed by Petitioner Appellant in the above case, and (c) Copy of the Order of Court of August 13, 1962, entered by the United States Court of Appeals for the First Circuit. In addition to these documents a copy of the Order of Court of July 25th., 1962, denying the Petition for Rehearing is being requested from the United States Court of Appeals, for the First Circuit, for remittance to this Court.

Jurisdiction

The jurisdiction of this Court is invoked under 28 USCA, Section 1254, which provides that final judgments of the United States Court of Appeals may be reviewed by the Supreme Court. The amount in controversy in the present

case, exclusive of interest and costs exceeds $5,000.00. The term within which a writ of certiorari intended to bring any judgment before this Honorable Court for review shall be applied for, may be extended, by a Justice of this Court, for good cause shown. 28 USCA S.2101.

Federal Questions To Be Presented In the Petition

In accordance with the provisions of paragraph 4 of Rule 22, Petitioner must set out in its application for extension of time the stage in the proceedings in the Court of First Instance and in the Appellate Court, at which, and the manner in which, the federal questions sought to be reviewed were raised, as well as the methods of raising them and the way in which they were passed upon by the Court.

This being a preliminary Motion for extension of time to file the Petition for Writ of Certiorari, Petitioner in compliance with the above Rule, now synthesizes the first federal question to be presented in the Petition, as follows: It was Petitioner's contention before the Tax Court of Puerto Rico that the People of Puerto Rico and the Treasurer of Puerto Rico lacked power in law to levy taxes on the mere introduction or importation of goods into this island and that the excise tax involved herein was tantamount to the levying of a customs duty on imports, which neither the People of Puerto Rico nor the Treasurer of Puerto Rico were authorized to levy. In Petitioner's opinion the Congressional authorization directed to the Legislature of Puerto Rico to provide for the collection of *internal revenue taxes* as soon as the wares, merchandise or products were brought into the island, did not establish a new tax not comprehended in the Organic Act of Puerto Rico known as the Jones Bill approved in 1917 by the Congress of the United States.

The Tax Court of Puerto Rico in deciding this question stated the following in its opinion:

"The decision (In the case of West India Oil Co. (P.R.) v. Treasurer, 54 P.R.R. 695, decided May 10, 1939), which dealt with a situation different from the one here involved, faced a series of constitutional problems regarding the taxing power of Puerto Rico, and served as a basis for the important pronouncement of the Supreme Court of the United States in West India Oil Co. (P.R.) v. Domenech, 311 U.S. 20. This pronouncement was of great significance because, obviously, the Supreme Court went beyond the problem involved on the basis of the specific tax being discussed therein, to focus and define globally the taxing power of Puerto Rico in the light of the Organic Act, of other statutes of Congress and of the Constitution".

. . . . . .

"Anyway, it should be noted that as the Supreme Court of the United States did in the above-mentioned case of West India Oil Co., the Court of Appeals in the latter case (Ballester Hermanos v. Tax Court, 162 F.2d 805) did not decide it looking solely at the specific tax involved therein. The West India case involved a sales tax that by itself constituted an excise; the Ballester case involved a property tax. But in both cases the two Federal Courts focused the constitutional position of Puerto Rico in tax matters in an integral manner.

"The power of Puerto Rico to levy a tax on articles not produced locally, as soon as such articles are imported into the island, whether they come from the United States or a foreign country, regardless of the constitutional clause forbidding states to tax imports and which has been held not applicable to the Island,

regardless of the customs law and regulations and of tariff laws, and regardless of the theory whether or not the merchandise is still in its original package and under the control of customs authorities or has already passed to form part of the bulk of local property, was established on March 4, 1927, by the Butler Act, amending Section 3 of the Organic Act now in force. And this power of Puerto Rico to tax as thus established, was judicially established on November 12, 1940, in the decision of the Supreme Court of the United States in West India Oil Co. v. Domenech, and has recently been reaffirmed, and enlarged as to its details, by the First Circuit in language giving no rise to any doubts

. . . . . .

"By virtue of the foregoing, we hold that Section 16, subdivision 29, of the Internal Revenue Law, imposing a tax on kerosene introduced into Puerto Rico, without further consideration to the use or consumption or disposition thereof within the island, is an act of the Legislative Assembly constitutionally valid. This leads us to consider then whether for the purposes of the law there was an introduction or importation of the product into Puerto Rico."

The above question was again raised before the Supreme Court of Puerto Rico during the oral argument of the case and in the brief filed by petitioner. Petitioner contended that by the Butler amendment no new type of tax was authorized in addition to the "internal revenue taxes levied by the Legislature of Puerto Rico" in pursuance of the authority granted by the Organic Act. The question was not that Congress could not authorize a tax on the mere introduction of goods and wares; the question was that Congress had not done it but merely authorized the local legislature to provide for the collection of the "internal

revenue taxes" at the time of the introduction of the objects subject to them.

The Supreme Court of Puerto Rico ruled as follows:

> "The three-cent tax on each gallon of kerosene was established as the price to be paid, only once, for the privilege of selling, using, consuming or trading it in the insular market, and also for the privilege of bringing it in or introducing it into here without further consideration as to its ultimate disposal. The day of its introduction is the tax day, the date of maturity of the tax indebtedness and on which the power to collect it arises. Its introduction establishes the *nexus* between imports and our jurisdiction for taxing purposes merging with the property of the territory. A customs duty is a duty on imports and exports".

Upon an adverse decision of the Supreme Court of Puerto Rico Petitioner filed an appeal with the United States Court of Appeals for the First Circuit. Before this Court Petitioner contended that a tax levied and collected on a product which before completion of the process of its introduction into the island is lost in the sea and never becomes a part of the property in the Island, would amount to a duty on imports since no taxable event covered by law occurred nor could occur, such as sale, use, transfer, and not even introduction. Petitioner further contended that the Legislature of Puerto Rico was not authorized to levy an internal revenue tax on articles, goods, or merchandise pursuant to the provisions of the then existing Organic Act when the sole taxable event would be, as in the present case, the crossing of an imaginary line at the end of a three-mile stretch of territorial waters within which three mile boundary the goods were lost in the sea. Petitioner contended that the holding of the Tax Court, affirmed by the

Supreme Court of Puerto Rico, amounted under our system of law and constitutional structure to the levying of a barrier between the integral parts of a nation and that internal revenue taxation, independently of the fact that it may seem to operate under certain circumstances, as import duties would operate, *must* always be founded on the added wealth that an object, ware or product may mean to a country or its citizens and upon some definite taxable event connected therewith.

The United States Court of Appeals for the First Circuit in the light of the broad language used by this Court in the case of *West India Oil Co. (P.R.) v. Domenech, supra*, held that the tax object of this suit had been authorized by the Congress of the United States by virtue of the Butler Amendment of the Organic Act of Puerto Rico, approved in 1917. It further held that as no gasoline was manufactured in Puerto Rico at the time of the collection of the tax there could not have been any discrimination.

II.

The second federal question to be presented in the Petition is one dealing with the constitutional guaranty known as "due Process". The parties in this case stipulated that "when the SS 'Fort Lane' was pumping the kerosene into the tanks of the petitioner through the pipes provided therefor, there occurred a loss of 181,140 gallons of said product at 60 , equivalent to 183,136 gallons at natural temperature, which product was lost into the sea and in the vicinity of Pier No. 13." Notwithstanding the fact that Petitioner's property was lost before the completion of the process of its introduction the Supreme Court of Puerto Rico held that on the critical date the kerosene had acquired a taxable situs in Puerto Rico and that in consequence the due process clause of Section 2 of the Organic

Act (48 USCA, S.737), did not prevent imposition of the tax in question. Petitioner's argument before the Supreme Court of Puerto Rico in connection with this matter was to the effect that even assuming the existence of a taxing power permitting the levying and collection of internal revenue taxes on imports because of the single fact of their introduction into Puerto Rico, it was not bound to pay the tax on the kerosene because the latter was lost while being delivered and without having been landed, and, therefore, it was never imported, brought or introduced here.

In its Brief filed with the First Circuit Court, Petitioner submitted that the above holding of the Supreme Court of Puerto Rico to the effect that the due process clause contained in Section 2 of the Organic Act was not infringed, was erroneous inasmuch as an internal revenue tax thus levied and collected on goods lost in the sea constituted an import duty prohibited by Puerto Rico's Constitutional Law as construed by the Circuit Court in the decision rendered in the case of *Buscaglia* v. *Ballester*, *supra*, where it was held that the words internal revenue taxes were used to describe any tax which a government may impose except "duties on imports". In closing this argument before the United States Court of Appeals for the First Circuit, Petitioner stated:

> "Unless this Court is satisfied that the tax in question is in *essence* and in *truth* an internal revenue duty, in which case it would not make any difference that its collection might operate as the collection of a customs duty, it should not, in view of its holding in the Ballester case maintain its validity. To do the latter would amount to deprive a citizen, in this case a corporation, of its property without the due process of law."

The United States Court of Appeals for the First Circuit affirmed the judgment of the Supreme Court of Puerto Rico maintaining the tax. Petitioner, once more in its Petition for Rehearing, submitted to the consideration of the First Circuit Court that the maintenance of the tax involved in this case constituted a violation of the provisions contained in both Constitutions relative to the deprivation of property rights without due process of law. The Petition for Rehearing was denied.

REASONS FOR THE APPLICATION FOR EXTENSION OF THE TERM

A. The health of the attorney in charge of this case from the date it was appealed to the Supreme Court of Puerto Rico, is greatly impaired, and a throat operation to be performed on her next October at New York City seems to be necessary.

B. Urgent family matters required the presence of the undersigned attorney, at Madrid, Spain, where this Application for Extension is Time is being prepared.

C. This being a case dealing with the reimbursement of taxes already paid to the Treasurer of Puerto Rico, no possible harm can be done to Respondent.

IN VIEW OF THE ABOVE, Petitioner respectfully requests that an extension of thirty days from the date in which the filing of the petition for a writ of certiorari is due, be granted for the filing of said petition.

Respectfully submitted from Madrid, Spain this 23rd. day of August, 1962.

JAMES R. BEVERLEY
CARMEN B. HERNANDEZ
Attorneys for Petitioner
By: (s) CARMEN B. HERNÁNDEZ

I, Carmen B. Hernandez, Certify, that on this date I have mailed a copy of this Application for Extension of Time

within Which to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit, to the Solicitor General of Puerto Rico, the Hon. J. B. Fernandez Badillo, to his address at the Department of Justice, Fortaleza Street, San Juan, Puerto Rico.

Madrid, Spain, August the 23rd., 1962.

(s) CARMEN B. HERNANDEZ
CARMEN B. HERNANDEZ

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5856.

TEXACO PUERTO RICO INC.,
PETITIONER, APPELLANT,

v.

SOL. LUIS DESCARTES, Treasurer of Puerto Rico,
INTERVENOR, APPELLEE.

JUDGMENT
June 7, 1962

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the Supreme Court of Puerto Rico is affirmed.

By the Court:
(s) ROGER A. STINCHFIELD
Clerk.

Approved:
(s) PETER WOODBURY
Ch.J.

[cc: Mrs. Hernandez and Mr. Cruz-Contreras]

United States Court of Appeals
For the First Circuit

No. 5856.

TEXACO PUERTO RICO, INC.,
PETITIONER, APPELLANT,
v.
SOL LUIS DESCARTES,
TREASURER OF PUERTO RICO,
INTERVENOR, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before WOODBURY, *Chief Judge*, and ALDRICH and SMITH,* *Circuit Judges*.

*Sitting by assignment.

Carmen B. Hernandez, with whom *James R. Beverley*, *R. Castro Fernandez*, and *R. Rodriguez Lebron* were on brief, for appellant.
Rodolfo Cruz-Contreras, Assistant Solicitor General, with whom *J. B. Fernandez-Badillo*, Solicitor General, was on brief, for appellee.

OPINION OF THE COURT.
June 7, 1962.

WOODBURY, *Chief Judge*. This appeal from a judgment of the Supreme Court of Puerto Rico affirming a judgment of the former Tax Court of Puerto Rico dismissing a complaint for refund for excise taxes was taken under § 1293 of Title 28 U.S.C. prior to its repeal on August 30, 1961, by Public Law 87 – 189 of the 87th Congress. 75 Stat. 417. The simple facts are stipulated and can be briefly summarized as follows:

Very early in the morning of January 18, 1948, a tanker from Aruba, Netherlands, West Indies, arrived in a har-

bor of San Juan with a cargo of kerosene destined for Texaco Puerto Rico, Inc. It docked and proceeded to unload but in the process 183,136 gallons of kerosene were spilled into the harbor because Texaco employees on the dock had negligently failed fully to close a valve, and as an added precaution to seal it with a so-called "blind flange," in the pipeline through which the kerosene was being pumped from the vessel to Texaco's tanks on shore.

On February 10, 1948, Texaco paid the Treasurer of Puerto Rico $5,494.08 in excise taxes[1] on the spilled kerosene and on April 9, 1948, it petitioned the Treasurer for refund. The Treasurer denied its petition on April 19 and soon thereafter Texaco filed a complaint for refund against the Treasurer in the now superseded Tax Court of Puerto Rico. That court entered judgment on December 1, 1950, dismissing the petition in accordance with its opinion and the Supreme Court of Puerto Rico on certiorari affirmed on March 2, 1961.

The Supreme Court of Puerto Rico held that the kerosene, although spilled into the harbor in the process of unloading, had been "introduced into Puerto Rico" within the meaning of § 16, *supra*. It said: "On the basis of these facts, which in part were stipulated and in part are proved by the documentary evidence attached to the record, no one can successfully claim that the kerosene in question was

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[1] Section 16 of Act No. 85 of August 20, 1925, Laws of P. R. 1925, p. 584, 590 as it stood amended in January 1948, by Act No. 116 of May 12, 1943, Laws of P. R. 1943, p. 334, 338 and by Act No. 158 of May 13, 1941, Laws of P. R. 1941, p. 948, 964, read in material part as follows:

"Section 16. — There shall be collected and paid once only, as an internal-revenue tax on the following articles sold, transferred, used or consumed in or introduced into Puerto Rico, and on the articles comprised in this section of the law.

* * *

29. *Kerosene.* — On all illuminating oils or substitute therefor, sold, transferred, used, or consumed in, or introduced into, Puerto Rico, a tax of three (3) cents a gallon."

not imported into, introduced into or brought to Puerto Rico and that it was never within our jurisdiction for taxing purposes."

This is certainly a reasonable construction to put upon the wording of the local taxing statute quoted in footnote 1 above. We cannot seriously entertain the suggestion that the Supreme Court's interpretation of local law was "inescapably wrong" or "patently erroneous" within the meaning given to these phrases in *Bonet* v. *Texas Company*, 308 U.S. 463, 471 (1940), and reiterated in *De Castro* v. *Board of Commissioners*, 322 U.S. 451 (1944).

Furthermore, the Supreme Court of Puerto Rico held that Texaco Puerto Rico, Inc., was not entitled to claim exemption under § 16-C of the Internal Revenue Law, Act No. 78 of May 9, 1944, Laws of P.R. 1944, p. 166, 170, as amended by Act No. 426 of May 14, 1947, Laws of P.R. 1947, p. 868, quoted so far as pertinent in the margin[2] for the reason that it had failed to provide proof of its right to exemption within 15 days of the date of importation as the statute requires.[3] The requirement of conclusive proof of

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[2] "Section 16-C. — The following objects or effects shall not be subject to the payment of the excises levied by this Act:

* * *

"(b) Those which, upon their receipt, are damaged, spoiled, or destroyed; or those which have evaporated or been lost by breakage; *Provided*, That in any of the preceding cases the person who alleges that he is not bound to pay the excises shall furnish to the Treasurer of Puerto Rico, within the fifteen (15) days following the date of importation, authentic and unquestionable proof of his right to the exemption; *Provided, further*, That if he does not do so within the term fixed, such consignee or person introducing such effects or objects, shall be obliged to pay on them the excises specified in this Act; . . ."

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[3] Since we hold this to be a valid ground for denying the exemption, there is no occasion for us to consider the alternative ground relied upon by the Supreme Court to the effect that a loss caused by negligence leaving a valve open is not equivalent to a loss by breakage and that the kerosene had not been damaged, spoiled or destroyed prior to receipt.

loss within 15 days of importation is clear and categorical, and certainly reasonable. And the evidence is undisputed that Texaco made no claim of loss until 80 odd days after the date the kerosene was spilled into the harbor. The statutory condition for claiming the exemption simply was not complied with and this is fatal to the claim under the generally accepted rule that statutes which create tax exemptions are to be strictly construed against the claimant. This principle also disposes of the argument put forth by Texaco based upon the stipulated fact that an Internal Revenue Agent was present at the time of the unloading and was fully aware not only of the loss but also of its extent, for the mere presence of a Treasury agent with knowledge of the loss is far from authentic and unquestionable proof of a loss filed with the Treasurer within 15 days.

The third and basic question on this appeal is not one of local law. It is whether in 1948 federal law authorized the Puerto Rican Legislature to impose an excise tax on the kerosene lost into the harbor under the circumstances in this case.

In § 3 of the Puerto Rican Organic Act of March 2, 1917, 39 Stat. 953, the Jones Act, Congress forbad the imposition of local export duties but otherwise gave the Legislature of Puerto Rico broad powers to impose taxes of various kinds, including internal revenue taxes, "for the purposes of the insular and municipal governments." Doubts and difficulties, however, arose with respect to the imposition of local taxes on goods while still in the original packages and also while in the control of the postal or customs authorities, and in part to resolve these doubts and obviate these difficulties Congress passed the so-called "Butler Amendment" n March 4, 1927. 44 Stat. Part II 1418. See *West India Oil Co.* v. *Domenech*, 311 U.S. 20, 27, 28 (1940); *Buscaglia* v. *Ballester*, 162 F.2d 805, 807 (C.A. 1, 1947), for fuller discussion and citation to legislative history.

This amendment, so far as presently pertinent, authorized the local legislature to impose income taxes as well as the other taxes enumerated in § 3 and added to the section the following paragraph:

> "*And it is further provided*, That the internal-revenue taxes levied by the Legislature of Porto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island: *Provided:* That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Porto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Porto Rican government in the collection of these taxes."

The Supreme Court of the United States in the *West India Oil Co.* case at page 28, and this court in *Buscaglia* v. *Ballester* at pages 808 and 809 recognized that the Butler Amendment quoted above authorized the Puerto Rican Legislature to impose taxes which in their practical effect amounted to a customs duty or duty or impost on imports. Yet in neither case was it suggested that Congress in the exercise of its broad powers under the second paragraph of Article IV, Section 3, of the Constitution of the United States to legislate respecting territories could not authorize the local legislature to impose such taxes. On the contrary, this court in *Buscaglia* v. *Ballester*, supra, concluded from the language used by the Court in the *West India Oil Co.* case that "even though the particular application of the insular general property tax to the appellee's merchandise may make that tax in its effect a duty or impost on imports, nevertheless it is a tax which Congress in the

exercise of its plenary power in the premises has authorized the insular legislature to impose." We say the same with respect to the excise tax involved in the case at bar. The appellant's extensive argument that the local excise tax cannot be imposed on the spilled kerosene because as so applied it amounts to a customs duty or duty or impost on an import, must be rejected.

The question now arises whether imposition of the tax in the case at bar violates the anti-discrimination proviso of the Butler Amendment.

Subsection 29 of Section 16 of the local tax statute quoted in footnote 1 does not impose any excise tax on the manufacture of kerosene in Puerto Rico. Under the subsection kerosene locally produced would be subject to tax only when it was "sold, transferred, used, or consumed." Therefore no tax could be imposed on locally manufactured kerosene lost by spillage immediately after its manufacture and before its sale, transfer, use or consumption, whichever might come first. Therefore, should we uphold the tax in this case, there would be disparity in the tax treatment of kerosene spilled in the process of unloading from a vessel and kerosene which might have been locally produced but spilled in the process of production or manufacture in violation of the Butler Amendment proviso.

But counsel agreed at oral argument that no kerosene was produced or manufactured in Puerto Rico in 1948.[4] Thus, there having been no local production of kerosene, there could have been no actual tax discrimination between the local and the imported product. The statutory discrimi-

[4] We may take judicial notice from *Lummus Company* v. *Commonwealth Oil Refining Company, Inc.*, 280 F.2d 915 (C.A. 1, 1960), that an oil refinery was built in Puerto Rico in the mid 1950's and we may presume that it is still operating and producing kerosene. But there will be time enough to explore the local tax statutes as they now read to see whether locally produced kerosene is taxed on a parity with the imported article when, if ever, the occasion may arise.

nation was only theoretical. We do not consider a hypothetical discrimination enough to invalidate the tax. We are not prepared to strike down the excise tax in question because the Legislature of Puerto Rico failed to place a similar tax on a non-existent activity.

Judgment will be entered affirming the judgment of the Supreme Court of Puerto Rico.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5856.

TEXACO PUERTO RICO INC.,
PETITIONER, APPELLANT,

v.

SOL LUIS DESCARTES, Treasurer of Puerto Rico,
INTERVENOR, APPELLEE.

ORDER OF COURT
July 25, 1962.

It is ordered that the petition for rehearing filed July 17, 1962, be, and the same hereby is, denied.

By the Court,
(s) ROGER A. STINCHFIELD
Clerk.

[cc: Mrs. Hernandez and Mr. Fernandez-Badillo]

Statutes

Organic Act of Puerto Rico

§3. (Taxes and Duties; Public Indebtedness)

That no export duties shall be levied or collected on exports from Puerto Rico, but taxes and assessments on property, income taxes, internal revenue, and license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the insular and municipal governments, respectively, as may be provided and defined by the Legislature of Puerto Rico; and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law, and to protect the public credit; . . . . Approved March 2, 1917, 39 Stat. 951; 48 U.S.C.A. 737.

Butler Amendment—Organic Act

And it is further provided. That the internal revenue taxes levied by the Legislature of Puerto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such Legislature may direct, on the articles subject to said tax, as soon as the same are manufactured, sold, used, or brought into the island.

Provided, That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Puerto Rican government in the collection of these taxes.—Mar. 2, 1917, c. 145, § 3, 39 Stat. 953; amended Feb. 3, 1921, c. 34, § 2, 41 Stat. 1096; Mar. 4, 1927, c. 503, § 1, 44 Stat. 1418; Aug. 26, 1937, c. 831, 50 Stat.

843; Aug. 17, 1950, c. 731, 64 Stat. 458; continued in effect July 3, 1950, c. 446, § 4, 64 Stat. 319.

THE FORAKER ACT.

§2. DUTIES ON FOREIGN IMPORTS.

That on and after the passage of this Act the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Puerto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries; PROVIDED, That on all coffee in the bean or ground imported into Puerto Rico theer shall be levied and collected a duty of five cents per pound, any law or part of law to the contrary notwithstanding; AND PROVIDED FURTHER That all Spanish scientific, literary, and artistic works, not subversive of public order in Puerto Rico, shall be admitted free of duty into Puerto Rico, for a period of ten years, reckoning from the eleventh day of April eighteen hundred and ninety-nine, as provided in said treaty of peace between the United States and Spain; AND PROVIDED FURTHER, That all books and pamphlets printed in the English language shall be admitted into Puerto Rico free of duty when imported from the United States. —Apr. 12, 1900, c. 181, § 2, 31 Stat. 77.

Section as still effective. This section is now covered by section 58 of the Puerto Rican Federal Relations Act. April 12, 1900, Volume 1 L.P.R.A., pages 24 and 25.

PUERTO RICAN FEDERAL RELATIONS ACT

§ 58. FEDERAL LAWS CONTINUED; ORGANIC ACT OF 1900; INCONSISTENT LAWS REPEALED.

That all laws or parts of laws applicable to Puerto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs, and duties on

importations into Puerto Rico prescribed by the Act of Congress entitled "An Act temporarily to provide revenues and a civil government for Puerto Rico, and for other purposes", approved April twelfth, hineteen hundred, and hereby continued in effect, and all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed.—Mar. 2, 1917, c. 145, § 38, 39 Stat. 968; continued in effect July 3, 1950, c. 446, § 4, 64 Stat. 319.

ORGANIC ACT, 1900. The provisions of the Organic Act of April 12, 1900, continued by this section are found in sections 2, 3, 4, 9 and 11 thereof. Volume 1 L.P.R.A., Page 171.

CONSTITUTION OF THE UNITED STATES
ARTICLE IV

SECTION 1. . . . . .

SECTION 2. . . . . .

SECTION 3. . . . . .

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State. Volume 1 L.P.R.A., pages 147, 148.

SECTION 16(a) OF INTERNAL REVENUE ACT OF PUERTO RICO (AS AMENDED BY ACT NO. 17 OF JUNE 3, 1927)

Section 16(a). There shall be levied and collected, once only, on all articles included in Section 62 of this Act, a tax of two (2) *per centum ad valorem*, as provided in section 4 hereof, when said articles are manufactured, produced or introduced in Puerto Rico for domestic use or consumption and not for commercial purposes; PROVIDED, That said tax shall be levied on articles taxable under this

Section as soon as they are manufactured, produced or introduced in Puerto Rico for domestic use or consumption; but payment shall be made before said articles are withdrawn from the factory or from the custody of the post office or customs authorities, or from the express or steamship agencies, in such manner as the Treasurer of Puerto Rico may by regulation prescribe.

SECTION 62 OF THE INTERNAL REVENUE ACT OF PUERTO RICO (AS AMENDED BY ACT NO. 17 OF JUNE 3, 1927)

Section 62. There shall be levied and collected, once only, on the sale of any articles the object of commerce, not taxed under Section 16 of this Act or exempted from taxation as provided in Section 83 of the same; and at the time of sale in Puerto Rico, a tax of two (2) per cent on the price or value of the daily sales of such articles, whether such sales are for cash or on credit, which tax shall be paid at the end of each month by the person making such sale.

SECTION 16 OF THE INTERNAL REVENUE ACT OF PUERTO RICO (AS AMENDED BY ACT NO. 17 OF JUNE 3, 1927)

Section 16. There shall be collected and paid, once only, an internal revenue tax on each of the following articles:

1. Cigars . . .
2. Cigarettes . . .
3. Cut Tobacco . . .
4. Prepared Chewing Tobacco . . .
5. Playing Cards . . .
6. Arms and Ammunition . . .
7. Matches . . .
8. Motor Vehicles . . .
9. Phonographs, Organs, etc. . . .

10. Pianolas and Accessories . . .
11. Pianos, etc. . . .
12. Films . . .
13. Photographic Cameras . . .
14. Billiard Tables . . .
15. Chewing Gum . . .
16. Bicycles, etc. . . .
17. Musical Instruments, etc. . . .
18. Mats, Carpets, etc. . . .
19. Lighting Apparatus . . .
20. Typewriters . . .
21. Chairs for Dentists, etc. . . .
22. Dynamite, Powder, etc. . . .
23. Cash Registers, etc. . . .
24. Adding and Calculating Machines . . .
25. Thermos and Vacuum Bottles . . .
26. Safes . . .
27. Electric Fans, etc. . . .
28. Glass Show Cases . . .
29. Jewelry . . .
30. Hydraulic Cement . . .
31. Lubricating Oils and Grease . . .

ARTICLE V, CONSTITUTION OF THE UNITED STATES.

nor shall (any person) be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . . . .

1 L.P.R.A., Page 151

CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO

Article 2. BILL OF RIGHTS

7. Right to Life, Liberty, and Enjoyment of Property; No Death Penalty; Due Process; Equal Pro-

tection of Laws; Impairment of Contracts; Exemption of Property From Attachment.

No person shall be deprived of his liberty or property without due process of law.

1 L.P.R.A., Page 180

[J. R. No. 59]

JOINT RESOLUTION

To Impose an Import Duty on Foreign Coffee Brought Into Porto Rico, and for Other Purposes

WHEREAS, As a result of the hurricane of September 13, 1928, the coffee industry suffered losses estimated at seventy-five per cent, and one fourth of the rural population of Porto Rico was reduced to a condition of misery;

WHEREAS, The lands devoted to the cultivation of coffee are, due to their hilly nature, unsuitable for the employment of mechanical means of cultivation, and the enforced use of manual labor increases the cost of production to such an extent that it makes it impossible to compete in price with other coffee exporting countries;

WHEREAS, The prices now prevailing in the world market are ruinous to such an essentially Porto Rican industry, and, in the absence of tariff protection, the industry would very soon disappear;

WHEREAS, An act is now pending approval by the Congress of the United States, which authorizes the Legislature of Porto Rico to impose a duty of ten cents on every pound of foreign coffee imported into Porto Rico;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF PORTO RICO:

Section 1. From and after August 1, 1930 an import duty of ten cents a pound is hereby levied on all coffee imported into Porto Rico, such duty to be collected by the

Federal Customs Service established in Porto Rico, according to such regulations as said Service may prescribe.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. This Act shall take effect as soon as any act is approved by the United States Government, whereby the Legislature of Porto Rico is authorized to impose an import duty on all coffee brought into this Island

Approved, May 5, 1930.

H. R. 9946

A Bill

Providing for the ratification of Joint Resolution Numbered 59 of the Legislature of Puerto Rico, approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the taxes and duties imposed by Joint Resolution Numbered 59, enacted by the Legislature of Puerto Rico and approved by the Governor of Puerto Rico, May 5, 1930, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of such Joint Resolution of the Puerto Rican Legislature is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed.

The above named Bill passed the House June 15th; passed the Senate June 16th; and was approved by the President June 18th, 1934. Public Law 411.

Public Resolution — No. 51 — 7th Congress

H. J. Res. 290.

Joint Resolution

To amend an act entitled "An Act providing for the ratification of Joint Resolution Numbered 59 of the Legislature of Puerto Rico approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico," approved June 18, 1934.

Whereas in enacting the Act approved June 18, 1934, ratifying the taxes and duties imposed by Joint Resolution Numbered 59 enacted by the Legislature of Puerto Rico, and approved by the Governor of Puerto Rico May 5, 1930, the Congress understood and intended in ratifying such Joint Resolution Numbered 59 of the Legislature of Puerto Rico that the "import duty" thereby and by subsequent acts of the Legislature of Puerto Rico "levied on all coffee imported into Puerto Rico" included and was intended to be levied upon all coffee brought into Puerto Rico whether from a foreign country or from any States, Territory, District or possession of the United States, or other place subject to its jurisdiction. Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled; That the Act of Congress entitled "An Act providing for the ratification of Joint Resolution Numbered 59 of the Legislature of Puerto Rico, approved by the Governor May 5, 1930, imposing an import duty on coffee imported into Puerto Rico," approved June 18, 1934, be, and it is hereby, amended so as to read as follows:

"That the taxes and duties imposed by the Legislature of Puerto Rico by Joint Resolution Numbered 59 approved by the Governor of Puerto Rico May 5, 1930, and by Act Numbered 7 ap-

proved by the Governor April 9, 1934, including therein such taxes and duties on coffee heretofore or hereafter brought into Puerto Rico from any State or Territory or district or possession of the United States, or other place subject to the jurisdiction of the United States, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of either of said acts of the Puerto Rican Legislature, including such taxes and duties on coffee heretofore or hereafter brought into Purto Rico from any State, Territory, district or possession of the United States, is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed."

Approved, August 20, 1935.

PUBLIC LAW NO. 600, 81st. CONGRESS: (Approved July 3, 1950); 64 Stat. 314, Title 1 LPRA, pp. 125 & 126:

"AN ACT TO PROVIDE FOR THE ORGANIZATION OF A CONSTITUTIONAL GOVERNMENT BY THE PEOPLE OF PUERTO RICO.

* * *

SEC. 2. This Act shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an island-wide referendum to be held in accordance with the laws of Puerto Rico. Upon the approval of this Act, by a majority of the voters participating in such referendum, the Legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico. The said constitution shall provide a republican form of government and shall include a bill of rights."

PUBLIC LAW 447, 82d CONGRESS; JOINT RESOLUTION APPROVING THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO WHICH WAS ADOPTED BY THE PEOPLE OF PUERTO RICO ON MARCH 3, 1952

WHEREAS the Act entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico", approved July 3, 1950, was adopted by the Congress as a compact with the people of Puerto Rico, to become operative upon its approval by the people of Puerto Rico; and

WHEREAS the people of Puerto Rico overwhelmingly approved such Act in a referendum held on June 4, 1951, and a constitution for the Commonwealth of Puerto Rico was drafted by a constitutional convention held as provided by such Act from September 17, 1951, to February 6, 1952; and

WHEREAS such constitution was adopted by the people of Puerto Rico, by a vote of three hundred seventy-four thousand six hundred and forty-nine to eighty-two thousand nine hundred and twenty-three, in a referendum held on March 3, 1952; and

WHEREAS the President of the United States has declared that the constitution of the Commonwealth of Puerto Rico conforms fully with the applicable provisions of such Act of July 3, 1950, and of the Constitution of the United States, that it contains a bill of rights, and provides for a republican form of government, and has transmitted the constitution of the Commonwealth of Puerto Rico to the Congress for its approval; and

WHEREAS the Congress has considered the constitution of the Commonwealth of Puerto Rico and has found it duly to conform to the above requirements: Therefore be it

RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the constitution of the Commonwealth of Puerto Rico

which was drafted by the selected delegates of the Constitutional Convention of Puerto Rico and adopted by the people of Puerto Rico in a referendum of March 3, 1952, in accordance with the Act entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico", approved July 3, 1950 (64 Stat. 319; 48 U.S.C., secs. 731b-731e), is hereby approved by the Congress of the United States, except section 20 of article II of said constitution: PROVIDED, That section 5 of article II thereof shall have no force and effect until amended by the people of Puerto Rico under the procedure prescribed by article VII of the constitution of the Commonwealth of Puerto Rico by adding to such section 5 the following declaration: "Compulsory attendance at elementary public schools to the extent permitted by the facilities of the state as herein provided shall not be construed as applicable to those who receive elementary education in schools established under nongovernmental auspices": PROVIDED FURTHER, That except for the purpose of adopting the amendments to section 5 of article II and to section 3 of article VII as herein provided, article VII of said constitution likewise shall have no force and effect until amended by the people of Puerto Rico under the terms of said article by adding to section 3 of article VII the following new sentence: "Any amendment or revision of this constitution shall be consistent with the resolution enacted by the Congress of the United States approving this constitution, with the applicable provisions of the Constitution of the United States, with the Puerto Rican Federal Relations Act, and with Public Law 600, Eighty-first Congress, adopted in the nature of a compact"; AND PROVIDED FURTHER, That the constitution of the Commonwealth of Puerto Rico hereby approved shall become effective when the Constitutional Convention of Puerto Rico shall have declared in a formal resolution its acceptance in the name

of the people of Puerto Rico of the conditions of approval herein contained, and when the Governor of Puerto Rico, being duly notified by the proper officials of the Constitutional Convention of Puerto Rico that such resolution of acceptance has been formally adopted, shall issue a proclamation to that effect.

(J.R. July 3, 1952, c. 567, 66 Stat. 327.)

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 625

TEXACO PUERTO RICO, INC.,
PETITIONER,

v.

SOL LUIS DESCARTES, TREASURER OF PUERTO RICO,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the Circuit Court of Appeals for the First Circuit (Supp. to Petition, p. 11) is reported at 304 F2d 184 (1962). The opinion of the Supreme Court of Puerto Rico is unreported in its English version and is printed in the Record Appendix, p. 39. The opinion of the Tax Court of Puerto Rico, printed in the Record Appendix, p. 13, is unreported in English.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition, except that on November 23, 1962 this Court entered an order signed by Mr. Justice Arthur J. Goldberg, extending the time to file petition for certiorari to and including December 3, 1962.

Statement

The facts in the present case were agreed to by the parties involved. (Record Appendix, pages 10-12) We will summarize them as follows:

At midnight on January 17-18, 1948 "SS Fort Lane" arrived in the San Juan harbor and docked at Pier No. 13 with a cargo of kerosene from Aruba. Of the total cargo destined to three dealers of petroleum products in Puerto Rico, a few thousand gallons were lost by evaporation, or otherwise. Deduction of this loss was allowed.

At 1:40 of that night, the discharge of the kerosene from the vessel to the tanks of the petitioner started. This was done by means of devices belonging to the petitioner and under the close inspection of its employee, Richard B. Polk.[1]

The discharge continued in a normal way and about 4:45 a.m. Mr. Polk, who had withdrawn to Pier 14 about 3:30 a.m., returned to Pier No. 13 where he found that the valve to discharge the kerosene was partially open and that a device called "blind flange", which is used as an added security measure during the unloading, was not attached to the valve.

The parties stipulated that "due to the negligence of the dock foreman, an employee of the plaintiff, who being

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[1] A deposition of Mr. Polk was admitted in evidence as part of the stipulation submitted by the parties to the Tax Court. (Record Appendix, pages 74-79)

responsible for the proper operation of the receiving lines or pipes of the plaintiff, left partially open plaintiff's valve to receive kerosene located in Pier No. 13, and who also failed to attach the blind flange to the valve as an added measure of security" a loss of 183,136 gallons of kerosene took place.

The petitioner, then, "without any previous requirement from the Treasurer of Puerto Rico" (Record Appendix, page 1) paid to the latter the sum of $5,494.08, which was the amount of the excise taxes on the lost kerosene.[2] In the amended complaint filed before the Tax Court the petitioner stated the request of the refund of that amount and the refusal of same by the Treasurer.

It was alleged by the herein petitioner that the decision of the Treasurer of Puerto Rico, the respondent, was null and illegal because the People of Puerto Rico had no power in law to levy and collect internal-revenue taxes, taking as a taxable event the mere introduction or importation of goods into the Island. It was also alleged that the article on which the tax was levied was never introduced into Puerto Rico. Finally, it was stated that the kerosene brought by the petitioner to Puerto Rico was exempt from such taxes pursuant to the provisions of Act No. 426 of May 14, 1947.

The Supreme Court of Puerto Rico, Mr. Justice Hernandez Matos delivering the opinion of the court, held that Puerto Rico had authority to impose the tax in the present case, stating:

> "Puerto Rico received from the United States Congress in clear, ample, and precise terms, on the sole condition of uniformity in its exercise, the necessary

[2] The remaining shipment was delivered to the other importers by the "Fort Lane" the next day in the Mayaguez harbor, and on January 20 in the Ponce harbor. (Record Appendix, pages 62-63)

fiscal power to levy and collect, with regard to imports and as soon as the merchandise was introduced into Puerto Rico, the same internal-revenue taxes it would levy and collect on articles manufactured locally."

The Court also held, as to the allegations that the kerosene was subject to a tax exemption, that the Petitioner had not exhausted the administrative remedy before the Treasurer, as a prerequisite for judicial determination.

The Circuit Court of Appeals affirmed the judgment of the Supreme Court of Puerto Rico which in turn affirmed the judgment of the Tax Court of Puerto Rico. Our argument will show that the decision below is right and that, consequently, the petition should be denied.

Argument

The first reason for not granting certiorari in this case is offered, not by Respondent, but by Petitioner. It says in the conclusion of the Petition (p. 12):

> "The question now before this Court is a recurring question; in the Petition for Certiorari filed with this Court in the case of *Tecon Corporation, Petitioner* v. *Secretary of the Treasury of the Commonwealth of Puerto Rico*, No. 900 (certiorari denied),[3] a similar levy was done in connection with machinery which was exclusively utilized in a federal base in Puerto Rico."

It should be obvious that if Petitioner in the *Tecon* case did not induce this Court to grant certiorari, the writ herein petitioned should be denied when the question now before the Court is a "recurring" one.

---

[3] October 8, 1962.

There are two basic issues before this Court in this case. One was stated by Mr. Chief Judge Woodbury in the opinion of the Circuit Court, as follows: "[w]hether in 1948[4] federal law authorized the Puerto Rican Legislature to impose an excise tax on the kerosene lost into the harbor under the circumstances in this case." The decision of the Circuit Court recognized that the Puerto Rican Legislature was so authorized; to that effect it cited *West India Oil Co.* v. *Domenech*, 311 U. S. 20, 27, 28 (1940) and one of its own cases, to which we will refer further on.

The other question is one of local law: if the kerosene spilled into the San Juan harbor in the process of unloading, had been "introduced into Puerto Rico" according to a section of a Puerto Rican law to which we will also make reference later on.

We will now turn to the first issue.

The Puerto Rican Organic Act of March 2, 1917, 39 Stat. 953, known as the Jones Act, empowered Puerto Rico by virtue of its Section 3, to levy and collect internal-revenue taxes. This power, however, was not exercised in an effective way because the tax could not be levied and collected on the pertinent articles, *at the time of their importation or introduction* into the Island. Because of this situation the then Governor of Puerto Rico, the persons in charge of the insular affairs in Washington and our own Resident Commissioner in Congress, Mr. Cordova Davila, decided to join their efforts in order to solve what was acknowledged to be a stumbling block in Puerto Rico's economic development.[5] Their work was finally channelled into two bills, introduced in the Senate and in the House of Repre-

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[4] The facts of this case took place before the important legislation that in 1952 created new legal and political changes in the relations between Puerto Rico and the United States. Vide: *Puerto Rican Federal Relations Act*, 64 Stat. 319 (1950).

[5] *Congressional Record*, Vol. 67, Part II, House July 2, 1926, p. 12775.

sentatives of the United States Congress, amending the above mentioned Sect. 3.

The Senate Bill (No. S-4247) was finally approved on March 4, 1927 and it has been called since, the Butler Amendment.

Before looking at the wording of the amendment itself, let us state that it was approved without any opposition and with a clear understanding by Congress of the Puerto Rican problem. The best evidence of it are the words pronounced by Congressman Mr. Kiess while the bill was under discussion:[6]

> "In making use of the authority granted by Section 3 to levy and collect internal-revenue taxes the government of Porto Rico has found itself unable to collect said taxes on articles purchased in and sent from the United States to Porto Rico by mail, or sometimes when said articles are sent by vessel, as the courts have held that the post-office or customs officials have no authority to withhold delivery of such articles subject to the internal-revenue tax until the tax is paid, *as such tax collected in this manner is in effect a customs duty.* In other words, the courts have held that the internal-revenue tax can not be collected while the article subject to the tax is in the original package.
>
> "This condition of affairs *has practically nullified the power of the insular government to levy internal-revenue taxes,* and therefore the efficacy of this source of revenue has been seriously impaired.
>
> "*For the purpose of righting this situation* a new provision is added to Section 3.
>
> "It is expected that the government of Porto Rico

[5] Act of March 4, 1927, 44 Stat. Part II, 1418.
[6] Ibid, page 12775.

will so make use of this power as not to unnecessarily place any barriers in the way of the free-trade conditions now existing between [Puerto Rico] and the mainland, which is the principal factor in the progress and prosperity of Porto Rico." (Emphasis supplied.)

By virtue of the Butler Amendment Section 3 of Puerto Rico's Organic Act came to read:

> "And it is further provided, That the internal-revenue taxes levied by the Legislature of Puerto Rico in pursuance of the authority granted by this Act on articles, goods, wares, or merchandise may be levied and collected as such Legislature may direct, on the articles subject to said tax, *as soon as the same are manufactured, sold, used, or brought into the Island;* Provided, That no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico. The officials of the Customs and Postal Services of the United States are hereby directed to assist the appropriate officials of the Puerto Rican government in the collection of these taxes."[7] (Emphasis supplied.)

Three months after the Butler amendment was approved the Puerto Rico Legislature amended its Internal Revenue Act of 1925[8] to include among taxable events the *introduction* into Puerto Rico of articles subject to tax.

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[7] The Act amended also Section 48 to which the following paragraph was added:

> "That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico shall be maintained in the District Court of the United States for Puerto Rico."

[8] Act No. 85, August 20, 1925, as amended by Act No. 17 of June 3, 1927.

It should be noted, that at the time of the approval of the Butler Amendment in 1927, the Supreme Court of the United States had adopted a definite constitutional doctrine with respect to territories. As to Puerto Rico the Court had decided in *Balzac* v. *Puerto Rico*, 258 U. S. 298 (1921) that the island was not incorporated into the United States by the Organic Act of 1917. Consequently, Congress could legislate with respect to Puerto Rico in any manner it saw fit, subject only to certain constitutional limitations.

Having this brief legislative history in mind let us examine the decision that clearly rules the facts of the instant case.

In *West India Oil Co.* (*P.R.*) v. *Domenech*, 311 U. S. 20 (1940) the Supreme Court of the United States had before it the following facts.

The West India Oil Co. (P.R.) was a domestic corporation engaged in importing, purchasing, and selling oil and products derived from the same. To facilitate business the corporation set up and maintained a bonded tank in the city of San Juan which was used to receive and deposit fuel oil brought from foreign countries to Puerto Rico. This oil remained in the tank for a period of time until it was re-exported to a foreign country, delivered to the steamers that purchased it to be used as fuel for their engines or delivered to purchasers for use in Puerto Rico; while in the bonded tank the oil was under the control of the customs service of the United States. The then Treasurer of Puerto Rico imposed a 2% sales tax upon oil delivered to vessels in Puerto Rican ports upon sales for use as ship's stores, as indicated. The tax was authorized by Sect. 16(a) 62 of the Internal Revenue Act of Puerto Rico, as amended by Act No. 17 of June 3, 1927.

This Court, considering the legality of such disposition, quoted the pertinent part of the "proviso" added by the

Butler Amendment to Section 3 of the Organic Act and stated:

> "The plain purport of the words of this proviso is that any tax authorized by the Organic Act with respect to articles of domestic production may likewise be levied with respect to imported articles 'as soon as . . .[they] . . . are manufactured, sold, used, or brought into the island' provided only that there be no tax discrimination between articles brought from the United States and foreign countries and domestic articles. The amendment seems to have been occasioned by doubts which had arisen whether merchandise brought to the Island from the United States was subject to local taxation while in the original package and also whether the merchandise has, while in the control of the customs authorities, the same status as respects local taxation as goods similarly controlled which have been imported from foreign countries and whether the power of the insular legislature to tax imports from foreign countries was any greater than that of the states which are forbidden, by Clause 2, of § 10 of Art. I of the Constitution, to tax imports and exports without consent of Congress . . .
>
> Moreover practical difficulties appear to have been experienced in levying insular taxes upon goods on their arrival from the United States and while in the custody or control of postal or customs officers; due to the fact that the local tax *while in its practical effect a customs duty* was not collected by postal or customs officials. S. Rep. No. 1011, 69th Cong., 1st Sess. *The doubts and the difficulty were removed by the amendment to § 3*, giving the Congressional consent that articles should be subject to the taxing jurisdiction of the Puerto Rico legislature as soon as

> brought into the Island whether from the United States or from foreign countries, and directing that the United States customs officials and postal service should aid local officers in the collection of the tax. The effect of the broad language of the amendment was not only to subject to taxation all imported goods, whether from the United States or foreign countries, when brought into the island in the original package, *but to neutralize the regulatory effect of the customs laws and regulations in so far as they protected articles from local taxation after their arrival.* Merchandise in the original package was thus subjected to tax when brought into the Island without regard to customs regulations. . . ." (Emphasis supplied.)

It is clear then, from the language used by this Court in the above mentioned case that the Butler Amendment authorized the Puerto Rican Legislature to impose taxes which in their practical effect amounted to a customs duty or impost on imports.[9]

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[9] Petitioner "calls the attention of the Court to the direct legislative act of Congress in the year 1934, after the Butler Amendment, to permit Puerto Rico to levy a custom duty on coffee. . . ." (Petition, p. 7) To that effect two cases are cited: *Puerto Rico Brokerage Co. Inc.* v. *U. S.*, 71 F2d 469; 76 F2d 605. It is accepted at the outset that a custom duty was involved in these cases: Congress authorized Puerto Rico, by two acts (Tariff Act of 1930, Sect. 319; 19 USCA 1319a) to impose tariff duties upon coffee grown in a foreign country coming into Puerto Rico from the United States.

No provision was made in these enactments, as in the Butled Amendment, to the effect that "no discrimination be made between the articles imported from the United States or foreign countries and similar articles produced or manufactured in Puerto Rico". This clearly indicates the congressional intention to authorize by one method the levying and collection of internal revenue taxes in the Butler Amendment even though such taxes may in effect be duties or imposts on imports, and to authorize by another method the imposition of a custom duty in the above mentioned acts. Both variations were within the powers of the Congress under the territorial clause.

The position adopted by this Court is obviously based on the broad powers given Congress under the second paragraph of Article IV, Section 3 of the Constitution of the United States.

The power given to Congress with respect to territories has been characterized by this Court as a "sweeping" one. *Puerto Rico* v. *Shell Co.*, 302 US 253, 263 (1937).

In *Hooven & Allison Co.* v. *Evatt*, 324 US 652, 674 (1944) this Court stated:

> "In exercising this power, Congress is not subject to the same constitutional limitations, as when it is legislating for the United States. See *Downes* v. *Bidwell, supra*;[10] *Hawaii* v. *Mankichi*, 190 U.S. 197; *Dorr* v. *United States, supra*;[11] *Dowdell* v. *United States*, 221 U.S. 325, 332; *Ocampo* v. *United States*, 234 U.S. 91, 98; *Public Utility Commissioners* v. *Ynchausti & Co., supra*,[12] 406-407; *Balzac* v. *Porto Rico, supra*.[13]
>
> And in general the guaranties of the Constitution, save as they are limitations upon the exercise of executive and legislative power when exerted for or over our insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the United States, has made those guaranties applicable. See *Balzac* v. *Porto Rico, supra*."

In the light of this jurisprudence the Puerto Rican people have attained economic progress. The legislative history of the Butler Amendment shows that the interpretation that was being given to Section 3 of the Organic Act was, precisely, detaining that progress. It is clear that Congress

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[10] 182 U.S. 244 (1901)
[11] 195 U.S. 138 (1904)
[12] 251 U.S. 401 (1919)
[13] 258 U.S. 298 (1921)

intended to recognize the complete legislative powers of the Puerto Rican Legislature with respect to local matters. That is why the statement made by the Court of Appeals, to the effect that the tax involved in the case at bar was a tax which Congress in the exercise of its plenary power in the premises had authorized the insular legislature to impose, is clear, forceful and correct.

As to the second question raised by the Petition we have already stated that it is a matter of local law.

Section 16 of Act No. 85 of August 20, 1925, Laws of Puerto Rico 1925, p. 584, 590, as it stood amended in January 1948, read in its pertinent part as follows:

> "Section 16.—There shall be collected and paid once only, as an internal-revenue tax on the following articles sold, transferred, used or consumed in or introduced into Puerto Rico, and on the articles comprised in this section of the law.
>
> * * *
>
> 29. *Kerosene.*—On all illuminating oils or substitute therefor, sold, transferred, used, or consumed in, or introduced into, Puerto Rico, a tax of three (3) cents a gallon."

The Supreme Court of Puerto Rico decided, and the Court of Appeals for the First Circuit affirmed, that, when 183,136 gallons of kerosene were spilled into the San Juan harbor, in the process of unloading, because Petitioner employees on the dock had negligently failed fully to close a valve, (and as an added precaution to seal it with a "blind flange") in the pipeline through which the kerosene was being pumped from the vessel to Petitioner's tanks on shore, the kerosene was "introduced into Puerto Rico", within the meaning of the above section. This is a reasonable construction of the statute.

In *Bonet* v. *Texas Co.*, 308 U.S. 463, 470-471 (1939) this Court reiterated what it said was a rule of "over sixty years":[14]

> "For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co.*, *supra*, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this court recently stated, 'Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.' *Bonet* v. *Yabucoa Sugar Co.*, *supra*, p. 510.
>
> We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

[14] To the same effect is *De Castro Board of Commissioners*, 322 U.S. 451 (1943).

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

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